IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6007 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUKESH ISHWARLAL PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6007 of 2001

MS JAYSHREE C BHATT for Petitioner No. 1

MRS HANSA PUNANI for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 24/12/2001

ORAL JUDGEMENT

The present petition has been filed by the petitioner who has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by order

dated 20/6/2001 passed by the Commissioner of Police, Ahmedabad City.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon four offences registered against the petitioner for the offences punishable under Sections 379 and 114 of Indian Penal Code. The detaining authority has also relied upon statement of witnesses recorded by the detaining authority. The learned advocate for the petitioner has further submitted that on the date of passing detention order, the petitioner was in judicial custody, and this aspect would have been considered by the detaining authority while passing the detention order. In this connection, he has drawn my attention towards the case of Amritlal and Others Vs. Union Govt. Through Secy., Ministry of Finance and Others, 2001 SCC (Cri) 147 wherein it was held at Head note as under:

> "Preventive Detention--Detention order-Subjective satisfaction--Detenu already in jail-Detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail--In absence of such satisfaction detention order cannot be sustained--Prevention of Illicit Traffic in Narcotic drugs and Psychotropic Substances act, 1988, S.3(1)"

4. It appears that on the date of passing the detention order, the detenu was in judicial custody, hence in view of the above judgement rendered in the case of Amrutlal (Supra), the detention order is illegal and cannot be sustained and the same is required to be quashed and set aside.

5. The petition is allowed. The impugned order of detention dated 20/6/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Mukesh Ishwarlal Prajapati is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Writ of this judgement and order be sent to Special Jail, Porbandar instead of District Jail, Bharuch. D.S. Permitted.

(R.P.DHOLAKIA,J.)

Rafik